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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/230,001	05/18/1999	EVERT BASTIAAN DE HEUS	MULLE20.001A	5036

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EXAMINER

THORNTON, KRISANNE MARIE

ART UNIT	PAPER NUMBER
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1744

DATE MAILED: 09/09/2003

47

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/230,001

Applicant(s)

DE HEUS, EVERT BASTIAAN

Examiner

Krisanne M. Thornton

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 14 August 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-12 and 14-24 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-12 and 14-24 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- 4) ☐ Interview Summary (PTO-413) Paper No(s) _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 1-6, 9-12 and 14-24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kalasek in view of the Applicant's admission of the state of the prior art.

Kalasek teaches a double-walled boiler sterilization apparatus having computer controlled, timed actuation, with a fluid reservoir provided between the sterilization chamber and an outer wall with heating means there. Placement of the sterilization chamber is concentric, but offset within the outer wall. Kalasek further teaches disrupted or pulsating introduction of steam into the chamber (see column 6, lines 21-26 and 43-45). Kalasek is silent of to the volumetric dimensions of the apparatus.

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Page 1 of the instant specification sets forth that volumes of from 10 to about 50 liters are conventional in the art of ministerilizers.

It would have been obvious to one of ordinary skill in the art to configure the apparatus of Kalasek within conventional volume dimensions of ministerilizers, as supported in Applicant's admission of the state of the prior art, for their known and effective application for point of use sterilization, such as in a dentist's office.

Kalasek teach square or rectangularly shaped structures, however it would have been well within the purview of one of ordinary skill in the art to utilize a cylindrical shape therefore, as cylindrical sterilization structures are conventional in the art as substantiated by the prior art of record, and mere changes in shape are not held to be patentable distinctions. It is further noted that the use of demineralized water in steam sterilizers is well known and expected because it minimizes the occurrence of mineral deposits from condensate within the structure that would deter optimal effectiveness of the apparatus.

Claims 7-8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kalasek and Applicant's admission of the state of the prior art, as applied to claims 1-6, 9-12 and 14-22 above, and further in view of Brucker WO 92/01479.

Brucker teaches the use of lateral supports within a boiler sterilizer for support of articles to be sterilized as well as, the utilization of a hinged, sealing door for operation of the apparatus.

It would have been obvious to one of ordinary skill in the art to provide the lateral supports of Brucker in the structure of Kalasek because it would clearly allow for the

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sterilization of an increased number of articles simultaneously, and it would further have been obvious to utilize door means as those in Brucker for the purpose of sealingly enclosing the structure to optimize containment of sterilizing medium and temperature maintenance.

Response to Arguments

Applicant's arguments filed 8/14/2003 have been fully considered but they are not persuasive.

Applicant argues that Kalasek cannot render the claims obvious because Kalasek fails to teach or suggest pulsating introduction of steam into the chamber, however, the Examiner would point to column 6, lines 21-26 and 43-45 which clearly describe a disrupted or pulsating introduction of steam.

Applicant further argues that Kalasek fails to teach a cylindrical sterilization boiler which Applicant deems necessary for the high pressure environment. Applicant further argues that Kalasek teaches in column 7, that a high pressure environment is not necessary, but that statement is taken out of context. Kalasek can operate the system in two different formats, one under pressure, and one that is not. The Examiner will maintain that use of a cylindrical chamber in steam sterilization is well known and expected (see WO 92/01479 or Ongaro US 5,840,248 for instance). The Examiner would further maintain that the declaration by Evert B. De Heus is not found to be persuasive because it does not provide any facts that overcome the pending rejection.

Conclusion

Conclusion

This is a RCE of applicant's earlier Application No. 09/230,001. All claims are drawn to the same invention claimed in the earlier application and could have been finally rejected on the grounds and art of record in the next Office action if they had been entered in the earlier application. Accordingly, **THIS ACTION IS MADE FINAL** even though it is a first action in this case. See MPEP § 706.07(b). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no, however, event will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Krisanne M. Thornton whose telephone number is 703-308-3914. The examiner can normally be reached on Mon.-Wed. 6:30am-4:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert J. Warden can be reached on 703-308-2920. The fax phone

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numbers for the organization where this application or proceeding is assigned are 703-305-7718 for regular communications and 703-305-3599 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.


KRISANNE THORNTON
PRIMARY EXAMINER
September 8, 2003